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FILED

MAY 06 2004

FRESNO COUNTY SUPERIOR COURT

By _____ DEPUTY

9 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO**

10 **CRIMINAL DIVISION**

11 PEOPLE OF THE STATE OF
12 CALIFORNIA

Case No. F049017856

13
14 Plaintiffs,

15 v.

16 MARCUS WESSON,

17 Defendant.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR RECONSIDERATION
OF COURT ORDER THAT
DEFENDANT DRESS OUT FOR
EVERY HEARING**

Date: June 14, 2004
Time: 9:00 a.m.
Dept: 53

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20 **I.**

21 **A RECONSIDERATION MUST BE HEARD BY THE SAME JUDGE**

22 A court has the inherent power to reconsider a ruling. However, one trial judge
23 may not reconsider and overrule a ruling of another judge. (*People v. Castello* (1998)
24 65 Cal.App.4th 1242, 1247-48)

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II.

A DEFENDANT HAS NO RIGHT TO DRESS OUT EXCEPT AT TRIAL

It is settled that a state may not compel an accused to stand trial while dressed in identifiable jail or prison clothing. (5 Witkin, California Criminal Law, Criminal Trial, section 18; *Estelle v. Williams* (1976) 425 U.S. 501, 96 S.Ct. 1691, 1693; *People v. Pena* (1992) 7 Cal.App.4th 1294, 1303) However, that prohibition does not apply to court proceedings other than trial. (*People v. Zapata* (1963) 220 Cal.App.2d 903, 911 (a defendant's right to dress out applies only to criminal trials and not to appearances before a magistrate or arraignment)).

Here, the accompanying Declaration of Lieutenant Joe M. Leon demonstrates the burden placed upon the Sheriff's Department and the Court if the defendant must be permitted to dress out for every hearing in this matter. The Sheriff's Department moves that this Court vacate its prior order and enter a new order that the defendant be permitted to dress out only at the time of his bench or jury trial.

Respectfully submitted,

PHILLIP S. CRONIN
County Counsel



By **J. WESLEY MERRITT**
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